

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
KTBU Licensing, Inc.	)	Facility I.D. No. 28324
Licensee of Station KTBU(TV)	)	NAL/Acct. No.: 201541420034
Conroe, Texas	)	FRN: 0021081906

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: December 23, 2015**

**Released: December 23, 2015**

By the Chief, Video Division, Media Bureau:

**I. INTRODUCTION:**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”) issued pursuant to Section 503(b) of the Communications Act of 1934, as amended (the “Act”), and Section 1.80 of the Commission’s Rules (the “Rules”),<sup>1</sup> the Commission finds that KTBU Licensing, Inc. (the “Licensee”), licensee of Station KTBU(TV), Conroe, Texas (the “Station”), apparently willfully and/or repeatedly violated Section 73.671 of the Rules by failing to properly identify children’s programming via display of the “E/I” symbol on the television screen;<sup>2</sup> Section 73.3526(e)(11)(i) by failing to timely prepare issues/programs reports;<sup>3</sup> and Section 73.3526(e)(7) by failing to timely prepare and file EEO reports.<sup>4</sup> Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of thirteen thousand dollars (\$13,000). We also find that the Licensee apparently willfully and/or repeatedly violated Section 73.3526(b)(2) of the Rules by failing to timely upload TV issues/programs lists, EEO reports, and children’s programming commercial limits reports to the online Commission hosted website (*i.e.*, a Station’s “e-pif”).<sup>5</sup> We hereby admonish the Licensee for these violations of the Commission’s rules.

**II. BACKGROUND:**

2. The Children’s Television Act of 1990 (“CTA”) provides television broadcast licensees with an affirmative obligation to offer programming that meets the educational and informational needs of children (“Core Programming”).<sup>6</sup> Section 73.671 of the Rules requires television broadcast licensees to meet certain criteria in order to demonstrate compliance with the children’s programming obligations set forth by the CTA.<sup>7</sup> In furtherance of the children’s programming obligations established by the CTA,

<sup>1</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

<sup>2</sup> 47 C.F.R. § 73.671.

<sup>3</sup> 47 C.F.R. § 73.3526(e)(11)(i).

<sup>4</sup> 47 C.F.R. § 73.3526(e)(7).

<sup>5</sup> 47 C.F.R. § 73.3526(b)(2).

<sup>6</sup> Pub L. No. 101-437, 104 Stat. 996-1000, codified at 47 U.S.C. §§ 303(a), 303(b), and 394.

<sup>7</sup> Section 73.671 implements the provisions of the CTA by establishing a process for evaluating compliance as part of a broadcaster’s license renewal proceeding. Licensees that fail to meet the Commission’s processing guidelines must be referred to the Commission for approval of the CTA portion of their renewal applications. 47 C.F.R. § 73.671(d),(e)(1). The Commission has established specific criteria for determining whether a program qualifies as Core Programming. 47 C.F.R. § 73.671(c).

broadcasters are also required to provide certain information to the public and programmers about the children's programming they air. For example, subsection (c)(5) of the rule requires broadcasters to identify Core Programming by displaying the "E/I" symbol on the television screen throughout the program.<sup>8</sup>

3. Section 73.3526 of the Rules requires each commercial broadcast licensee to maintain a public inspection file containing specific types of information related to station operations.<sup>9</sup> In accordance with subsection 73.3526(e)(11)(i) of the Rules, every commercial television licensee is required to place in its public inspection file, on a quarterly basis, an issues and programs list with a brief description describing the "programs that have provided the station's most significant treatment of community issues during the preceding three month period."<sup>10</sup> Under subsection 73.3526(e)(7), each commercial television licensee must upload all information required with respect to EEO responsibilities as described in Section 73.2080<sup>11</sup> of the Commission's rules. Furthermore, as set forth in subsection 73.3526(e)(11)(ii),<sup>12</sup> each commercial television licensee is required to prepare and place in its public inspection file certification that it complied with the commercial limits on children's programming set forth in Section 73.670<sup>13</sup> of the Commission's rules.

4. In 2012 the Commission adopted Section 73.3526(b)(2) of the Rules, which requires licensees to upload elements of stations' public files to an on-line Commission hosted website (*i.e.*, a Station's "e-pif"). This requirement includes uploading copies of a station's quarterly TV issues/programs lists, EEO public file reports, and records concerning children's commercial limits to its e-pif.<sup>14</sup> Broadcasters' e-pif requirements were phased in between August 2012 and February 2013. Beginning August 2, 2012, stations were required to post any document that would otherwise be placed in a station's public file, with limited exception, to their e-pif on a moving forward basis. By February 4, 2013, stations were required to upload to their e-pif, with limited exceptions, documents that were already in their physical public file prior to August 2, 2012.<sup>15</sup>

5. On April 1, 2014, the Licensee filed its license renewal application for the Station.<sup>16</sup> In

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<sup>8</sup> 47 C.F.R. § 73.671(c)(5); *Children's Television Obligations of Digital Television Broadcasters*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 22943, 2259-60 (2004) ("2004 Report and Order").

<sup>9</sup> 47 C.F.R. § 73.3526(e)(11)(i).

<sup>10</sup> *Id.*

<sup>11</sup> 47 C.F.R. § 73.2080.

<sup>12</sup> 47 C.F.R. § 73.3526(e)(11)(ii).

<sup>13</sup> 47 C.F.R. § 73.670.

<sup>14</sup> 47 C.F.R. § 73.3526(b)(2); *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, Extension of the Filing Requirement for Children's Television Programming Report*, Second Report and Order, 27 FCC Rcd 4535 (2012) ("Second Report and Order") (requiring broadcast television stations to post their public inspection files, with limited exception, to an online Commission-hosted database).

<sup>15</sup> See *Effective Date Announced for Online Publication of Broadcast Television Public Inspection Files*, Public Notice, 27 FCC Rcd 7478 (2012) (announcing effective date of electronic public file rule); *Television Broadcast Stations Reminded of Their Online Public Inspection File Obligations*, Public Notice, 27 FCC Rcd 15315 (2012) (reminding station's to upload copies of existing public file documents to their electronic public file); *Television Broadcast Stations Reminded of the Upcoming Public Inspection Filing Deadline*, Public Notice, 28 FCC Rcd 429 (2013) (providing a final reminder to broadcasters to upload copies of existing public file documents to their electronic public file); see also Second Report and Order, 27 FCC Rcd at 4580, para. 97 (establishing compliance periods for complying with broadcasters new electronic public file requirement).

<sup>16</sup> File No. BRC DT-20140401 AOO ("KTBU Renewal").

response to Section IV, Question 8, the Licensee certified that it did not identify “each CORE program aired at the beginning of the airing of each program.” In Exhibit 25 of its license renewal application, the Licensee admits that the Station failed to properly display the “E/I” symbol during children’s programming broadcast on three of its five digital multicast channels airing foreign language programming produced overseas.<sup>17</sup> Staff review of KTBU’s quarterly Children’s Television Programming Reports during the current license cycle confirmed that Licensee failed to display the “E/I” symbol during children’s programming broadcast on three of its five digital multicast channels for fifteen quarters of its licensing term.<sup>18</sup> Licensee states that it did not have the capability to insert the “E/I” symbol into the foreign language programming produced overseas at its master control. It explains that it requested a waiver, “to the extent necessary,” of the “E/I” requirement with each Children’s Television Report it filed for these programs and states that it has now remedied the error by coordinating with the overseas providers to insert the “E/I” symbol in all educational programming on a going-forward basis.<sup>19</sup>

6. Section IV, Question 3 of license renewal application requires a licensee to certify that required documentation “has been placed in the public file at the appropriate times.”<sup>20</sup> In response to this question, Licensee states that it failed to both timely finalize, by failing to include local programming, and upload copies of the Station’s quarterly TV issues/programs lists; that the EEO public file reports were not timely prepared or uploaded to the Station’s e-pif for 2012-2103 and 2013-2104; and that its records concerning children’s programming commercial limits were timely prepared, but not timely uploaded to the Station’s e-pif. Licensee states that it has now finalized and uploaded all missing documents.

7. A staff inspection of the Station’s e-pif confirms Licensee’s responses. For example, Licensee untimely uploaded to the Station’s e-pif its quarterly records concerning children’s programming commercial limits for 10 quarters.<sup>21</sup> Additionally, Licensee did not upload any of the Station’s issue/programs lists to the Station’s e-pif until the date it filed its renewal application on April 1, 2014.<sup>22</sup> Licensee was also subsequently late uploading its issues/ programs lists for 5 quarters after filing its renewal application.<sup>23</sup>

### III. DISCUSSION

8. The Licensee failed to properly display the “E/I” symbol during children’s programming broadcast on three of its five digital multicast channels airing foreign language programming during the licensing term. Failing to display the “E/I” symbol constitutes an apparent willful and/or repeated violation of Section 73.671 of the Rules. Licensee explains that it requested a waiver of the “E/I” requirement within each Children’s Television Report it filed stating it did not have the capability at its master control to insert the “E/I” symbol into the foreign language programming produced overseas. The proper course of action is to request a waiver of the “E/I” requirement under Section 1.3 of the Commission’s rules.<sup>24</sup> Moreover, while the Licensee states in the license renewal application that it did

<sup>17</sup> *Id.* at Exhibit 25 (Children’s Television Programming).

<sup>18</sup> Licensee acquired the Station on August 1, 2011. File No. BALCDT - 20110509ACN (FCC Form 314).

<sup>19</sup> KTBU Renewal at Exhibit 25.

<sup>20</sup> FCC Form 303-S available at: <http://transition.fcc.gov/Forms/Form303-S/303s.pdf>.

<sup>21</sup> Quarters 3 and 4 of 2012; Quarters 1, 2, 3, and 4 of 2013; Quarters 3 and 4 of 2014; and Quarters 1 and 3 of 2015. *See supra* note 15 and para. 4.

<sup>22</sup> The issues/programs lists for the following quarters were all uploaded to the Station’s e-pif filed on April 1, 2014: Q3 and Q4 of 2011; Q1, Q2, Q3, and Q4 of 2012; Q1, Q2, Q3, and Q4 of 2013. *See supra* note 15 and para. 4.

<sup>23</sup> Licensee failed to timely upload issues/programs lists to the Station’s e-pif for the following 5 quarters: Quarters 3 and 4 of 2014 and Quarters 1, 2, and 3 of 2015.

<sup>24</sup> 47 C.F.R. § 1.3; *See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990)(noting that waiver of the Commission’s rules is appropriate only if both (i) special circumstances warrant a deviation from the

not have the capability to place at its master control the “E/I” symbol into the foreign language programming produced overseas, it does not explain why it could not have arranged for the “E/I” symbol to be included by the foreign program provider, as it appears to have done on a going-forward basis. Although the Station has worked to correct the problem, this does not relieve the Licensee of liability for the violations that have already occurred.<sup>25</sup>

9. The Licensee also apparently failed to timely complete and subsequently upload to the Station’s e-pif (i) the Station’s issues/programs lists for 15 quarters, in violation of Sections 73.3526(e)(11)(i) and 73.3526(b)(2) and (ii) the Station’s EEO public inspection file reports for two years, in violation of Sections 73.3526(e)(9) and 73.3526(b)(2). Furthermore, the Licensee also apparently failed to timely upload certification of its compliance with the commercial limits on children’s programming to its e-pif, in violation of 73.3526(b)(2) of the Rules for 10 quarters. Although the Station has worked to correct these problems, this does not relieve the Licensee of liability for the violations that have already occurred.<sup>26</sup>

10. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission to have “willfully and/or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission...shall be liable to the United States for a forfeiture penalty.”<sup>27</sup> Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.<sup>28</sup> The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,<sup>29</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>30</sup> Section 312(f)(2) of the Act provides that “[t]he term ‘repeated,’ when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”<sup>31</sup>

11. The Commission’s *Forfeiture Policy Statement* and Section 1.80(b) of the Rules establish a base forfeiture amount of \$8,000 for violations of the Commission’s children’s requirements, of \$3,000 for failure to file a required form, and \$10,000 for public file violations.<sup>32</sup> In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in Section 503(b)(2)(E) of the Act, including “the nature, circumstances, extent and gravity of

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general rule, and (ii) such deviation will serve the public interest). *See also KTVU, LLC, Licensee of Station KICU-TV, San Jose, California*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 11693, 116964, n. 8 (Vid. Div. 2014). Such a waiver request should include why waiver is appropriate and propose an on-screen solution that will allow viewers of foreign-language programming to identify, in a meaningful way that is consistent with the underlying purpose of the “E/I” symbol requirement, programming that has been specifically designed to educate and inform children. *Id.*

<sup>25</sup> *See International Broadcasting Corp.*, 19 FCC 2d 793, 794 (1969) (Permitting mitigation as an excuse based upon corrective action following a violation would “tend to encourage remedial rather than preventive action.”).

<sup>26</sup> *Id.*

<sup>27</sup> 47 U.S.C. § 503(b)(1)(B); *see also* 47 C.F.R. § 1.80(a)(1).

<sup>28</sup> 47 U.S.C. § 312(f)(1).

<sup>29</sup> *See* H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>30</sup> *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>31</sup> 47 U.S.C. § 312(f)(2); *see also Callais Cablevision, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1359, 1362 (2001).

<sup>32</sup> *See Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (“*Forfeiture Policy Statement*”), *recon. denied*, 15 FCC Rcd. 303 (1999); 47 C.F.R. § 1.80(b) (4), note to paragraph (b)(4), Section I.

the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”<sup>33</sup>

12. Based on our review of the facts and circumstances, including the duration of the violation, we find that the Licensee is liable for a forfeiture in the amount of \$3,000 for its apparent willful and/or repeated violation of Section 73.671 of the Rules for failure to display the “E/I” symbol during children’s programming on three of its five digital multicast channels. The Licensee also failed, in violation of Section 73.3526 of the Rules, to timely prepare and place in the public inspection file (i) the Station’s issues/programs lists for 15 quarters and (ii) the Station’s EEO public inspection file reports for two years; we believe that a forfeiture of \$10,000 is appropriate for these violations. Accordingly, we find that the Licensee is liable for a forfeiture in the amount of \$13,000 for its apparent willful and repeated violations of Sections 73.671 and 73.3526 of the Rules. Furthermore, in violation of Section 73.3526(b)(2) of the Rules, the Licensee failed to timely upload to the Station’s e-pif (i) issues/programs lists for 15 quarters; (ii) the Station’s EEO public inspection file reports for two years; and (iii) certification of its compliance with the commercial limits on children’s programming, and we believe an admonishment is appropriate for these violations.

#### IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED**, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission’s Rules, that KTBU Licensing, Inc., licensee of Station KTBU, Conroe, Texas, is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of thirteen thousand dollars (\$13,000) for its apparent willful and/or repeated violations of Sections 73.671 and 73.3526 of the Commission’s Rules.

14. **IT IS FURTHER ORDERED**, pursuant to Section 1.80 of the Commission’s Rules, that within thirty (30) days of the release date of this *NAL*, KTBU Licensing, Inc., SHALL PAY the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

15. Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the *NAL*/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank-Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the *NAL*/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code).

16. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554, ATTN: Adrienne Denysyk, Video Division, Media Bureau, Room 2-A820 and MUST INCLUDE the *NAL*/Acct. No. referenced above.

17. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the respondent’s current

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<sup>33</sup> 47 U.S.C. § 503(b)(2)(E); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 C.F.R. § 1.80(b)(8) and note to paragraph (b)(8), Section II.

financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.<sup>34</sup>

18. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>35</sup>

19. **IT IS FURTHER ORDERED** that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to KTBU Licensing, Inc., A California Limited Partnership, 100 Valley Drive, Brisbane, CA 94005, and to its counsel, Nancy A. Ory, Esq., Lerman Senter PLLC, 2000 K Street, NW, Suite 600, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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<sup>34</sup> See *San Jose State Univ.*, 26 F.C.C. Rcd. 5908 (2011) (noting that “[t]ypically, the Commission uses gross revenue as the primary measuring stick by which it evaluates a licensee's ability to pay. Other financial indicators may be considered....”).

<sup>35</sup> See 47 C.F.R. § 1.1914.